THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.11056 OF 1998

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Dated: 10th August, 2005.

Between :

Laxmaiah

… Petitioner

and

1. The Presiding Officer, Industrial Tribunal-cum-Labour Court,

Warangal and another

… Respondents

ORDER:

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This writ petition is filed by the petitioner-Workman being aggrieved by the award passed by the Industrial Tribunal-cum-Labour Court, at Warangal, in I.D.No.253 of 1993, dated 23-06-1997, insofar as denial of back wages, continuity of service and all other attendant benefits.

2. It is the case of the petitioner-Workman that he was appointed as a driver in Andhra Pradesh State Road Transport Corporation in the year 1977. While he was working under the second respondent-Depot Manager, A.P.S.R.T.C., Bhadrachalam Depot, Khammam District, he applied for leave on 02-04-1988 and 03-04-1988 and proceeded to his native place. There, he fell sick and underwent treatment. The illness was diagnosed as Tuberculoric and hemolytic jaundice for which he had to take prolonged treatment. Thus he could not attend duties. However, he submitted a sick certificate at the time of joining duty. Inspite of that, the second respondent-Management issued a charge-sheet dated 07-09-1988 with the following charge:

> "For having absented for your duty from 04-08-1988 to till date without any intimation to your immediate superior which constitute misconduct under Reg.28(xxvii) of A.P.S.R.T.C Employees' (Conduct) Regulations, 1963."

Without considering the explanation submitted by the petitioner-Workman, an enquiry was ordered into the matter by the second respondent-Management. After the enquiry was over, a show cause notice dated 01-06-1989 was issued and ultimately, he was removed from service by an order dated 12-09-1989 for his alleged unauthorised absence from 04-08-1988 to 07-09-1988. The petitioner-Workman filed an appeal and the same was dismissed. Having no other option, the petitioner-Workman approached the Industrial Tribunal-cum-Labour Court, Warangal and filed a petition under Section 2-A(2) of the Industrial Disputes Act, 1987 (for short, 'the Act'). The Labour Court found that though the charges are proved, the punishment of removal from service is disproportionate to that of misconduct alleged and as such, directed reinstatement of the petitioner-Workman into service as fresh recruit as a driver, but without continuity of service, back wages and all other attendant benefits. Accordingly, the Labour Court grossly erred in denying the continuity of service and back wages in the nature of the misconduct even if it is proved.

3. Though no counter affidavit is filed, the learned Counsel for the second respondent-Management strenuously contended that the award passed by the Labour Court is just and proper and it does not call for any interference of this Court, since the past conduct of the petitioner was taken into consideration while granting relief in the I.D.

4. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side, perused the award passed by the Labour Court and other material made available on record.

5. At the outset, I am of the opinion that even if the past conduct of the petitioner-Workman is taken into consideration, denial of continuity of service is a very harsh punishment since this is only a case of unauthorised absence, supported by a sick certificate, which was produced by the petitioner-Workman and according to the said certificate, he was suffering from jaundice etc. However, the finding of the Labour Court that the charges against the petitioner-Workman are proved, cannot be faulted with. Even the past conduct also does not relate to any misconduct of serious

nature. For his unauthorised absence, earlier, the petitioner-Workman was warned twice and annual increments were deferred thrice. Therefore, I am of the opinion that the Labour Court has not properly exercised the discretionary power vested in it under Section 11A of the Act in denying the relief of continuity of service in a case like this. Admittedly, the petitioner-Workman had put in more than 12 years of service before he was removed from service for the present misconduct. Denial of 12 years continuity of service would entail in lot of consequences such as seniority and also retiral benefits. Therefore, I am of the view that the award of the Labour Court is liable to be modified holding that the petitioner-Workman is entitled for reinstatement with continuity of service, but without any attendant benefits and without any back wages.

6. In the result, the award passed by the Labour Court is modified to say that the petitioner-Workman is entitled for reinstatement with continuity of service, but without back wages and without any attendant benefits. The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V. RAMULU, J

10th August, 2005.

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